

AMENDED IN ASSEMBLY AUGUST 31, 2009

AMENDED IN ASSEMBLY JULY 15, 2009

AMENDED IN SENATE APRIL 30, 2009

AMENDED IN SENATE APRIL 23, 2009

SENATE BILL

No. 197

Introduced by Senators Pavley and Benoit

February 23, 2009

An act to amend Sections 1335, 1337, ~~1341, and 1345~~ *and 1341* of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 197, as amended, Pavley. Domestic violence proceedings: conditional examination of witnesses.

Existing law provides for the conditional examination of a witness by the defendant in all cases, and by the people in cases where the punishment may be other than death, if the defendant is charged with a serious felony and there is evidence that the life of the witness is in jeopardy, and in certain other circumstances.

This bill would also provide for the conditional examination of a witness by the people or the defendant in a case of domestic violence, as defined, when there is evidence that the life of the witness is in jeopardy or when there is evidence that a victim or material witness has been or is being dissuaded, as provided, from cooperating with the prosecutor or testifying at trial. The bill would make conforming changes to related provisions.

~~Existing law requires the testimony of a witness conditionally examined to be reduced to writing and authenticated in the same manner as that taken in support of an information, and also authorizes the~~

testimony to be video-recorded. Existing law provides that the deposition or a certified copy may be read in evidence, or if the examination was video-recorded, that video-recording may be shown by either party at the trial if the court finds that the witness is unavailable.

~~This bill would authorize the court to decline to admit conditional examination testimony at the trial if the witness unavailability was caused or procured by the party seeking its admission. Because the bill would exclude relevant evidence in a criminal proceeding, this bill would require a $\frac{2}{3}$ vote of each house of the Legislature pursuant to certain provisions of the California Constitution.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1335 of the Penal Code is amended to
2 read:
- 3 1335. (a) When a defendant has been charged with a public
4 offense triable in any court, he or she in all cases, and the people
5 in cases other than those for which the punishment may be death,
6 may, if the defendant has been fully informed of his or her right
7 to counsel as provided by law, have witnesses examined
8 conditionally in his or her or their behalf, as prescribed in this
9 chapter.
- 10 (b) When a defendant has been charged with a serious felony
11 or in a case of domestic violence, the people or the defendant may,
12 if the defendant has been fully informed of his or her right to
13 counsel as provided by law, have a witness examined conditionally
14 as prescribed in this chapter, if there is evidence that the life of the
15 witness is in jeopardy.
- 16 (c) As used in this section, “serious felony” means any of the
17 felonies listed in subdivision (c) of Section 1192.7 or any violation
18 of Section 11351, 11352, 11378, or 11379 of the Health and Safety
19 Code.
- 20 (d) If a defendant has been charged with a case of domestic
21 violence and there is evidence that a victim or material witness
22 has been or is being dissuaded by the defendant or any person
23 acting on behalf of the defendant, by intimidation or a physical
24 threat, from cooperating with the prosecutor or testifying at trial,
25 the people or the defendant may, if the defendant has been fully

1 informed of his or her right to counsel as provided by law, have a
2 witness examined conditionally as prescribed in this chapter.

3 (e) For the purposes of this section, “domestic violence” means
4 any public offense arising from acts of domestic violence as defined
5 in Section 13700.

6 SEC. 2. Section 1337 of the Penal Code is amended to read:

7 1337. The application shall be made upon affidavit stating all
8 of the following:

9 (a) The nature of the offense charged.

10 (b) The state of the proceedings in the action.

11 (c) The name and residence of the witness, and that his or her
12 testimony is material to the defense or the prosecution of the action.

13 (d) That the witness is about to leave the state, or is so sick or
14 infirm as to afford reasonable grounds for apprehending that he
15 or she will not be able to attend the trial, or is a person 65 years
16 of age or older, or a dependent adult, or that the life of the witness
17 is in jeopardy, or that the witness is a victim or material witness
18 in a domestic violence case who has been or is being intimidated
19 or threatened as described in subdivision (d) of Section 1335 from
20 cooperating with the prosecutor or testifying at trial.

21 SEC. 3. Section 1341 of the Penal Code is amended to read:

22 1341. If, at the designated time and place, it is shown to the
23 satisfaction of the magistrate that the stated ground for conditional
24 examination is not true or that the application was made to avoid
25 the examination of the witness at the trial, the examination cannot
26 take place.

27 ~~SEC. 4. Section 1345 of the Penal Code is amended to read:~~

28 ~~1345. The deposition, or a certified copy of it, may be read in~~
29 ~~evidence, or if the examination was video-recorded, that~~
30 ~~video-recording may be shown by either party at the trial if the~~
31 ~~court finds that the witness is unavailable as a witness within the~~
32 ~~meaning of Section 240 of the Evidence Code. The court may~~
33 ~~decline to admit conditional examination testimony at the trial if~~
34 ~~the witness unavailability was caused or procured by the party~~
35 ~~seeking its admission. The same objections may be taken to a~~
36 ~~question or answer contained in the deposition or video-recording~~
37 ~~as if the witness had been examined orally in court.~~